

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

JAN 20 1998

In the Matter of)
)
 Policy and Rules Concerning the)
 Interstate, Interexchange Marketplace) CC Docket No. 96-61
)
 Implementation of Section 254(g) of the)
 Communications Act of 1934, as amended)

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

**REPLY TO OPPOSITIONS TO AND COMMENTS ON
PETITION FOR FURTHER RECONSIDERATION**

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. §1.429, the Telecommunications Management Information Systems Coalition (the "Coalition")¹ and The Utility Reform Network ("TURN")² (collectively "Petitioners") hereby submit this reply to the oppositions to and comments regarding their Petition for Further Reconsideration ("Petition") of the Commission's Order on Reconsideration released in the above-captioned proceeding on August 20, 1997 ("Reconsideration Order").

¹ The Coalition is composed of three telecommunications management information systems companies and was formed for the purpose of participating in this proceeding. The three companies are Salestar, Center for Communications Management Information ("CCMI"), and Tele-Tech Services ("Tele-Tech").

² TURN is a nonprofit organization that advocates on behalf of California's residential and small business customers of telecommunications, electric and gas services. TURN has 30,000 dues-paying members in California.

No. of Copies rec'd 0+11
 List A B C D E

I. A MAJORITY OF COMMENTERS STRONGLY SUPPORT REINSTATEMENT OF A PUBLIC INFORMATION DISCLOSURE REQUIREMENT FOR MASS MARKET SERVICES

The majority of the filing parties, representing both diverse segments of the industry and consumer groups,³ agreed that reinstatement of a public information disclosure requirement for mass market services serves compelling public interest objectives. The disclosure requirement will enable consumers to (1) make informed choices among the vast array of long distance carriers and services, and (2) assist the Commission in its enforcement of rate averaging and rate integration mandated by Section 254(g) of the Communications Act.⁴

II. THE LONE OPPONENT FAILS TO ADVANCE A SINGLE MERITORIOUS ARGUMENT AGAINST THE REINSTATEMENT OF THE INFORMATION DISCLOSURE REQUIREMENT FOR MASS MARKET SERVICES

A. *Marketing and Billing Information is Not Sufficiently Accurate or Complete for Informed Decision-Making*

Sprint — the *only* filing party to oppose the Petition — fails to advance a single compelling argument as to why the Commission should not promptly reinstate the information disclosure requirement for mass market services. Contrary to Sprint's assertions, consumers will not receive sufficient information through the marketing and

³ These parties were MCI Telecommunications Corporation ("MCI"), the National Consumers League ("NCL"), and the Rural Telephone Coalition ("RTC"). One commenter, the RTC, advocates the adoption of a more stringent information disclosure requirement than that urged by the Petitioners or originally adopted by the FCC. Comments of The Rural Telephone Coalition ("RTC Comments") at 3.

⁴ RTC Comments at 2-3; Comments in Support of Petition for Reconsideration National Consumers League at 2 ; Comments of MCI Telecommunications Corporation at 2.

billing process to make informed choices or to bring statutory and regulatory violations to the Commission's attention. As the survey and studies discussed in the Petition emphasized, consumers need accurate and detailed price and service information to make informed decisions regarding their long distance carriers. Any information mailed in a customer bill is available only to existing customers and does not assist customers making an initial service decision. Moreover, as evidenced by the Salestar informal study summarized in the Petition, consumers can only expect to face increasing difficulty extracting information from carriers absent a public disclosure requirement.

A newly commissioned survey submitted by NCL fully supports Salestar's findings that marketing materials are woefully inadequate information sources for consumers. The NCL survey, *Telephone Competition: A Study of Three Markets*, sought to measure, among other things, the level of consumer awareness of service options in the Chicago, Detroit/Grand Rapids and Milwaukee markets.⁵ Eighty-nine percent of those surveyed indicated that they obtain information about new telecommunications products and services from advertising. Importantly, however, 71 percent of survey participants found the information obtained from advertising to be "confusing," with 28 percent finding that information "very confusing."⁶ "As a result, . . . 82 percent [of the survey participants] believe that consumers have a need for a source of unbiased, clear information about telecommunications products and services."⁷ The results of NCL's survey belie Sprint's

⁵ *Telephone Competition: A Study of Three Markets*, Louis Harris and Associates, Inc. at 1 (Attached as Exhibit A to Comments in Support of Petition for Reconsideration National Consumers League).

⁶ *Id.* at 7.

⁷ *Id.*

assertion that consumers will receive accurate and complete information from carriers' "massive advertising and marketing efforts."⁸

It is notable that Sprint would have consumers rely on marketing promotions as a reliable source of information when one of Sprint's promotional campaigns was recently awarded a Harlan Page Hubbard "Lemon Award" for being one of nine of the "most misleading, unfair and irresponsible" advertising campaigns in 1997.⁹ Contrary to Sprint's assertions, a plethora of marketing information will not necessarily provide consumers with the information they need.

B. Marketing and Billing Information is Not Adequate for Enforcement Purposes

Customers must have access to price information if they are to remain the guardians of the consumer complaint process. The Commission traditionally has relied on the public to bring violations of Section 201 and 202 to its attention and will now look to the public to detect violations of Section 245(g)'s provisions.¹⁰ Consumers cannot fill this role, however, if they are denied access to carriers' price and service information, because carriers are unlikely to advertise violations of statutory requirements. Although Sprint notes other industries that are not required to maintain and adhere to publicly available

⁸ Opposition of Sprint Corporation at 4 ("Sprint Opposition").

⁹ Beth Berselli, *Imperfect Pitches Yield Sour Notes; 'Lemons' Go to 9 Firms Cited for Misleading Ads*, The Washington Post, Dec. 5, 1997 at G3. The "Lemon Awards" are presented by a coalition of consumer and health groups that include the Consumer Federation of America, the Center for Science in the Public Interest and the U.S. Public Interest Research Group. *Id.*

¹⁰ See Second Report and Order, 11 FCC Rcd 20730, 20776 (1996).

schedules of rates, terms and conditions in the provision of their services,¹¹ these industries, unlike the long distance industry, are not subject to the strict requirements of Sections 201, 202 and 254(g) of the Communications Act.

Specifically, regarding Section 254(g), Sprint's contention that a carrier's certification of compliance with Section 254(g) will be sufficient to ensure compliance begs the question. The Commission in its Reconsideration Order failed to address why certification should be adequate now when only 15 months ago the Commission concluded that carrier certifications were an insufficient safeguard of the requirements of Section 254(g). Sprint does not add any persuasive reasons for this unexplained change in course.

C. A Public Information Disclosure Requirement is not Tantamount to a Tariff Filing

Contrary to Sprint's arguments, a public information disclosure requirement does not have the same legal standing as a tariff filing requirement. Unlike a tariff, for example, price and term information disclosed pursuant to a public information disclosure requirement is not subject to investigation or suspension. Similarly, price and term information disclosed pursuant to a public information disclosure requirement will not invoke the filed rate doctrine.

Such price and term information is essential, however, to detect potential violations of the requirements of Sections 201, 202 and 254(g) of the Communications Act. So long as long distance carriers remain subject to those requirements of the Act,

¹¹ Sprint Opposition at 2.

carriers should be required to disclose their price and service information so that the public can assist the Commission in policing compliance with those requirements.

III. CONCLUSION

Accordingly, for all of the reasons stated in the Petition and above, the Commission should promptly reinstate the public information disclosure requirement for mass market services.

Respectfully submitted,

TELECOMMUNICATIONS
MANAGEMENT INFORMATION
SYSTEMS COALITION

THE UTILITY REFORM NETWORK

By: Cheryl A. Tritt / JEN
Cheryl A. Tritt
Joan E. Neal
Joyce H. Jones
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006
(202) 887-1500

By: Thomas J. Long / JEN
Thomas J. Long
Senior Telecommunications Attorney
THE UTILITY REFORM NETWORK
711 Van Ness Avenue, Suite 350
San Francisco, CA 94102
(415) 929-8876

Its Attorneys

Dated: January 20, 1998

CERTIFICATE OF SERVICE

I, Kathryn M. Stasko, do hereby certify that the foregoing **REPLY TO OPPOSITIONS TO AND COMMENTS ON PETITION FOR FURTHER RECONSIDERATION** has been furnished, via first class mail, postage prepaid, on this 20th day of January, 1998, to the following:

Chairman William E. Kennard*
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Commissioner Susan Ness*
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth*
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Michael K. Powell*
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Gloria Tristani*
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

A. Richard Metzger, Jr.*
Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Ruth Milkman*
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Richard K. Welch*
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

James D. Schlichting*
Chief
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

Carol E. Matthey*
Deputy Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Susan Launer*
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Donald J. Elardo
MCI Telecommunications Corp.
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Ellen G. Block
Henry D. Levine
James S. Blaszk
Levine, Blaszk, Block & Boothby, LLP
2001 L Street, N.W., Suite 900
Washington, D.C. 20036

L. Marie Guillory
National Telephone Cooperative
Association
2626 Pennsylvania Ave., N.W.
Washington, D.C. 20037

Susan Grant
Vice President for Public Policy
National Consumers League
1701 K Street, N.W., Suite 1200
Washington, D.C. 20006

Andrew Jay Schwartzman
Of Counsel
Consumer Action
Consumer Federation of America
1707 L Street, N.W.
Washington, D.C. 20036

Jordan Goldstein*
Policy & Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Leon Kestenbaum
Jay C. Keithley
Michael B. Fingerhut
Sprint Corporation
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036

Margot Smiley Humphrey
Koteen & Naftalin, LLP
1150 Connecticut Ave., N.W., Suite 1000
Washington, D.C. 20036

Lisa M. Zaina
Organization for the Promotion and
Advancement of Small
Telecommunications Companies
21 Dupont Circle, N.W., Suite 700
Washington, D.C. 20036

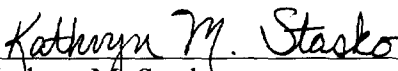
Emmitt Carlton
Counsel
Telecommunications Research
& Action Center
P.O. Box 27279
Washington, D.C. 20005

Abe Mosseri
President
Abe's Electronics, Inc.
1957-61 Coney Island Avenue
Brooklyn, NY 11223

Nat King
Harmony Computers & Electronics, Inc.
1801 Flatbush Avenue
Brooklyn, NY 11210

Nissan Rosenthal
President
Econobill Corporation
1351 East Tenth Street
Brooklyn, NY 11230

* Hand Delivery


Kathryn M. Stasko